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Courtroom Number: No hearing scheduled  
Location: No hearing scheduled

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DOROTHY BROWN  
CIRCUIT CLERK  
COOK COUNTY, IL  
2018CH08965

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION**

WILLIAM CALLOWAY, )  
)  
Plaintiff, )  
) 18 CH 08965  
v. )  
) Hon. Raymond Mitchell  
CHICAGO POLICE DEPARTMENT, )  
)  
Defendant. )

6645307

**PLAINTIFF’S MOTION FOR RULE TO SHOW CAUSE WHY CPD AND COPA  
SHOULD NOT BE HELD IN CONTEMPT OF COURT AND TO ENFORCE THE  
COURT’S AUGUST 16, 2018 ORDER**

This is a FOIA case seeking the release of “all dash cam, body cam, surveillance cam footage collect[ed] as part of the investigation into the officer involve[d] shooting that occurred Saturday July 14th, on 71st & Chappell in the South Shore neighborhood.” Compl. Ex. A. That incident was the fatal shooting of Harith Augustus by a CPD officer. *See* Chicago Tribune, 'We are hurting deeply': Family of Harith Augustus responds to fatal police shooting, *available at* <https://www.chicagotribune.com/news/ct-met-statement-family-harith-augustus-20180721-story.html>. Shortly after the shooting, CPD released an edited copy of some of the video in response to public criticism of the shooting, but refused to produce the remaining, unedited video under FOIA, resulting in this lawsuit. *See* COPA Ltr. to CPD, attached as Exhibit A (referencing the “piecemeal and arguably narrative-driven video release” by CPD).

On August 16, 2018, following a hearing before Judge Flynn on Plaintiff’s summary judgment motion, in which CPD represented that the Civilian Office of Police Accountability “does intend to release this material today,” the Court ordered that “Civilian Office of Police Accountability shall produce all of the requested records at issue in this case by 5pm on August

16, 2018.” 8/16/18 Trans. at 8:11-9:10, attached as Ex. B; 8/16/18 Order, attached as Ex. C. COPA posted videos on its website by that deadline, and CPD represented to the Court on September 7, 2018, that it complied with the order, which required the production of “all” dash cam, body cam, and surveillance video of the incident. 9/7/18 Trans. at 7:1-4, attached as Exhibit D.

On September 19, 2019, The Intercept and journalist Jamie Kalven reported on a CPD dash cam video of the incident that had not previously been released. The Intercept, How Chicago Police Created a False Narrative After Officers Killed Harith Augustus, *available at* <https://theintercept.com/2019/09/19/harith-augustus-shooting-chicago-police/> (“Intercept Article”). That video, as it turns out, was posted to the COPA website for the first time on August 30, 2019, more than a year after the court-ordered deadline. A CPD report uncovered by Mr. Kalven and dated July 14, 2018, more than a month *before* the court-ordered production deadline, clearly referenced dash cam video and the fact that it had been “uploaded to City servers.” Ex. E.

In addition, Mr. Kalven discovered reference in CPD reports to two additional videos from nearby closed-circuit private surveillance cameras that were downloaded by CPD but have still not been released. *See* Intercept Article, Embedded Video, at 5:30. CPD and COPA remain in continued violation of the August 16, 2018 order through their failure to produce this surveillance video, now weeks after the dash cam video was finally made public.

For these reasons, the Court should (1) order CPD and COPA to show cause why they should not be held in contempt, and (2) order CPD to produce the surveillance videos that have still not been released within 24 hours.

RESPECTFULLY SUBMITTED,

*Matthew V. Topic*

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**CERTIFICATE OF SERVICE**

I, Matthew V. Topic, certify that on September 19, 2019, I caused the foregoing to be served via electronic mail on all counsel of record.

/s/ Matthew V. Topic



*Via Electronic Mail*

July 19, 2018

Eddie T. Johnson  
Superintendent of Police  
Chicago Police Department  
3510 S. Michigan Avenue  
Chicago, Illinois 60653

Dear Superintendent Johnson:

I write regarding the Chicago Police Department's release of certain video footage related to the July 14, 2018 officer-involved death of Mr. Harith Augustus.

We are concerned that the Department's release of select – and edited – video from the incident undermines the process for release of information carefully established by the City. Straying from these established policies can frustrate efforts to restore trust and confidence in this City's accountability system. The Department's decision to release certain video, but not other video or audio from this incident has placed COPA in the untenable position of attempting to maintain the integrity of our investigation after the Department has already released some – but not all – of the relevant video. This piecemeal and arguably narrative-driven video release breeds suspicions, which may ultimately undermine COPA's ability to successfully investigate allegations of misconduct and officer involved shootings – an outcome inconsistent with the City's efforts at reform.

Furthermore, and of critical importance, publicly releasing video prior to COPA conducting key interviews creates the substantial risk that witnesses to an incident, civilian or sworn, may intentionally or unintentionally comport their recollection of the events with what they have seen in the video. Additionally, such unilateral public release does not allow COPA, as it is required to do under the City's Video Release Policy, the opportunity to afford the deceased's next of kin review of the video prior to its release.

As a former law enforcement officer, I understand the need for public safety and the Department's concerns and obligations in that regard; however, there are other methods of ensuring public safety that the Department could have – and has previously – used that do not risk undermining a subsequent investigation. The Department electing to release video in an effort to quell public concern in this instance has the real potential to undermine the accountability process by establishing a dangerous precedent in which video is released only when it serves to justify the actions of Department members. That would be a step backward, not forward, for Chicago's transparency efforts. Public safety must be maintained even in

1615 WEST CHICAGO AVENUE, 5TH FLOOR, CHICAGO, ILLINOIS 60622  
312.743.COPA (COMPLAINT LINE) | 312.746.3609 (MAIN LINE) | 312.745.3598 (TTY) | WWW.CHICAGOCOPA.ORG

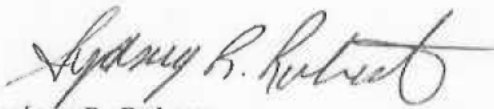
Exhibit A

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instances in which there is no video appearing to provide justification for the Department member's actions or, worse, when there is video that appears to undermine a Department member's actions. To the extent the Department's decision addressed a real or perceived risk of public safety, any short-term success in that regard comes with an increased risk to public safety in the future should the Department make a different decision in the immediate aftermath of another incident. In short, any narrative-driven decision relating to release of information may undercut COPA's ability to balance transparency with investigative needs, and may also undercut the long-term goal of public trust.

The City and its citizens will only come to trust the Department as well as the entire oversight system when there is trust in the *system* and the *process*. COPA therefore requests that the Department cease any further release of information in this case or other COPA investigations without the express concurrence of COPA.

Respectfully,



Sydney R. Roberts  
Chief Administrator  
Civilian Office of Police Accountability

cc: Walter Katz, Deputy Chief of Staff for Public Safety, Office of the Mayor

IN THE CIRCUIT COURT, COOK COUNTY ILLINOIS

CHANCERY DIVISION

|                            |   |                 |
|----------------------------|---|-----------------|
| WILLIAM CALLOWAY,          | ) |                 |
|                            | ) |                 |
| Plaintiff,                 | ) |                 |
|                            | ) |                 |
| vs.                        | ) | No. 18 CH 08965 |
|                            | ) |                 |
| CHICAGO POLICE DEPARTMENT, | ) |                 |
|                            | ) |                 |
| Defendant.                 | ) |                 |

REPORT OF PROCEEDINGS at the hearing of  
the above-entitled cause before the Honorable  
JUDGE PETER FLYNN, Judge of said Court, in  
Courtroom 2408, Daley Center, Chicago, Illinois  
on Thursday, August 16, 2018 commencing at  
10:15 A.M.

## 1 APPEARANCES:

2 LOEVY &amp; LOEVY, by

3 MR. MATT TOPIC

4 MR. JOSH BURDAY

5 (311 North Aderdeen, 3rd Floor

6 Chicago, Illinois 60607)

7 appeared on behalf of the plaintiff;

8  
9  
10 CITY OF CHICAGO, by

11 MS. AMBER RITTER

12 (30 North LaSalle Street, Suite 1720

13 Chicago, Illinois 60602)

14 appeared on behalf of the defendant.  
15  
16  
17  
18 - - - -  
19  
20  
21  
22

1 MS. RITTER: Amber Ritter for the  
2 Police Department.

3 MR. TOPIC: And Matt Topic for  
4 Mr. Calloway.

5 THE COURT: This matter is before the  
6 Court on cross motions for summary judgment.

7 I have read all of the material  
8 that you have given me, and hopefully I will  
9 have it in front of me in the next 30 seconds  
10 or so.

11 But I don't want to stop either  
12 side from adding anything you feel you should  
13 add.

14 So have you talked about who  
15 would go first?

16 MS. RITTER: It is my initial motion,  
17 so I could go first, I think that would be  
18 appropriate.

19 MR. TOPIC: No objection.

20 MS. RITTER: Your Honor has indicated  
21 that he, of course, has read the briefs. I  
22 don't want to belabor what you have already



1 read. I do think that it is worth pointing out  
2 a few things.

3 And, particularly, first about  
4 the issue of the timing of when this complaint  
5 was filed, the actual allegations of the  
6 complaint itself and how they don't state a  
7 cause of action under FOIA.

8 Now to be clear, since the time  
9 that the complaint has been filed, the police  
10 have denied the FOIA request.

11 THE COURT: The argument that you just  
12 began with is a legitimate argument, but for  
13 purposes of our discussion this morning, it is  
14 a little bit the tail-wagging stall.

15 Were I to accept your argument  
16 100%, I would dismiss this action without  
17 prejudice to its instant refiling.

18 MS. RITTER: Right.

19 THE COURT: At the end of which we  
20 would be exactly where we are now.

21 MS. RITTER: Agreed.

22 THE COURT: I really don't want to do

1 that if I --

2 MS. RITTER: I totally understand that,  
3 and that makes perfect sense from an efficiency  
4 standpoint.

5 But I do want to point out that I  
6 don't think -- I do think it is a flouting of  
7 the FOIA law for a plaintiff to file a FOIA  
8 request on -- over the weekend, and then file a  
9 lawsuit on a Wednesday morning before the  
10 public body even has even responded in any way.

11 The FOIA statute is clear that  
12 the Court only has jurisdiction upon a denial  
13 of a FOIA request. It must be either done in  
14 writing or after five business days have past  
15 if the public body fails to respond. Neither  
16 of this has happened here. I understand that  
17 it is a waste of time to get into that --

18 THE COURT: We have a much more  
19 substantive debate --

20 MS. RITTER: Just for the record I  
21 wanted to make it clear --

22 THE COURT: But I understand your

1 point.

2 MS. RITTER: Okay. Thank you.

3 And also just for the purposes of  
4 efficiency, it does seem that if we are, and  
5 again we will get to the substance of it in a  
6 moment, but you know if we are -- if summary  
7 judgment is entered on this complaint, seems  
8 like it needs to be amended in some fashion in  
9 order for summary judgment to be entered,  
10 either way on, you know, what actually is the  
11 reality of the situation at this point.

12 But having said that --

13 THE COURT: Okay. Let me just pause a  
14 second there.

15 I think what you are referring to  
16 is Gold Realty versus Kismet Cafe, which is a  
17 first district Appellate Court decision in  
18 which Justice Wolfson confronted a case in  
19 which as the Appellate Court panel told the  
20 story, on the facts before the Court the  
21 plaintiff was indeed entitled to summary  
22 judgment, but on a theory of relief that the

1 plaintiff hadn't explicitly pleaded in his  
2 complaint. Can't do that, wrote Justice  
3 Wolfson, and I therefore must conclude that I  
4 can't do that, even as he acknowledged that may  
5 seem hyper technical.

6           If you stop and think about what  
7 he was getting at, I don't know that it is  
8 hyper technical. It is certainly unforgiving  
9 but it is not necessarily hyper technical. It  
10 is however the rule in the first district.

11           So it would be difficult for me  
12 to grant a Motion for Summary Judgment by a  
13 plaintiff on the ground that the department had  
14 flunked the time requirements of FOIA, when the  
15 facts are that the department had in fact  
16 responded in an appropriately timely fashion,  
17 even though the plaintiff thinks that there are  
18 other serious deficiencies in the department's  
19 position.

20           Hopefully we can avoid that  
21 difficulty. It is a procedural problem, but  
22 all of you know that procedure is not a

1 triviality, if we don't pay attention to it we  
2 get in terrible trouble.

3 So, if we need to circle around  
4 and come back to that at the end, we will.

5 MS. RITTER: All right.

6 THE COURT: For the moment though  
7 let's move on to the more substantive issues on  
8 which the two of you have really head-on joined  
9 battle.

10 MS. RITTER: Thank you.

11 So on that issue, your Honor,  
12 first I would like to inform the Court that  
13 COPA, which is the entity that does make the,  
14 you know, regular release of video and other  
15 records pursuant to its video-release policy,  
16 which was of course pursuant to the Police  
17 Accountability Task Force recommendations  
18 several years ago, does intend to release this  
19 material today.

20 They are meeting, my  
21 understanding, one of the precursors to  
22 releasing anything is that they must show the

1 videos and the materials to the family of the  
2 decedent prior to releasing it, that is one of  
3 the requirements, and that is happening this  
4 afternoon.

5 So they weren't able to release  
6 anything prior to today's hearing, because they  
7 haven't been able to schedule something with  
8 the family. As long as the family actually  
9 comes in, they are planning to release this  
10 material towards the end of today.

11 So to the extent that is a factor  
12 in the Court's, you know, analysis or to just  
13 keep you abreast of what is actually happening  
14 in reality on one portion of that.

15 This case though, of course, is  
16 about whether CPD properly denied the FOIA  
17 request when they did so a week ago, you know,  
18 a week ago or a week and a half ago.

19 They did so, of course, on the  
20 grounds that there was an ongoing -- three  
21 different bases for the denial.

22 The first is, exemption

1 (7) (1) (d) (1) which provides that:

2 Records in the possession of any  
3 public body, created in the course  
4 administrative enforcement proceedings, and any  
5 law enforcement or correctional agency for law  
6 enforcement purposes are bound but only to the  
7 extent that disclosure would:

8 Section (1) is interfere with  
9 pending or actually and reasonably contemplated  
10 law enforcement proceedings conducted by any  
11 law enforcement or correctional agency that is  
12 the recipient of the request.

13 And while we are at it I will  
14 read: Section (2), which is also at issue,  
15 which is interfere with active administrative  
16 enforcement proceedings conducted by the public  
17 body that is the recipient of the request.

18 And finally Section (3) is,  
19 create a substantial likelihood that a person  
20 will be deprived of a fair trial or impartial  
21 hearing.

22 So plaintiff's argument here, if

1 I can characterize it, is that the law  
2 enforcement agency that is the recipient of the  
3 request, which they admit is in the statute, is  
4 the police department.

5           Whereas the law enforcement  
6 agency that is conducting the investigation and  
7 the administrative course of proceeding is  
8 COPA, Civilian Office of Police Accountability,  
9 COPA.

10           COPA is a separate City  
11 department, of course, from the police  
12 department. And as we all know --

13           THE COURT: Help me out here for the  
14 record, is the Chicago Police Department an  
15 independent entity capable of suing and being  
16 sued?

17           MS. RITTER: It is under FOIA, because  
18 a public body -- the definition of public body  
19 under FOIA is a, you know, public body or a  
20 subsection thereof.

21           And under the case law, each City  
22 department is a separate public body under



1 FOIA. So in that sense the police department  
2 is suable as is COPA.

3 THE COURT: So when we look at public  
4 bodies as in records in the possession of any  
5 public body under FOIA, we are not looking at  
6 public body in the sense of municipal  
7 corporation or independently suable entity, we  
8 are looking at an artificial construct that  
9 FOIA probably means the people who have the  
10 records.

11 MS. RITTER: I would agree that's  
12 probably what it means. You know, what it means  
13 here is up to debate.

14 Even if we take it to mean that  
15 the FOIA definition of body public, which does  
16 treat, you know, each City department as a  
17 separate public body, as being the public body  
18 that needs to get the FOIA request and also be  
19 the public body that needs to be conducting the  
20 investigation.

21 And I don't mean to jump ahead of  
22 you, if you wanted to focus on a different

1 point at this moment.

2 But the enabling statute of COPA  
3 is clear, that COPA's investigation must  
4 involve the police department, the assistance  
5 of the police department in conducting it.

6 That's part of the ordinance that  
7 created COPA, so that purpose COPA -- the  
8 police department is part of COPA's  
9 investigation of its own records. Its  
10 investigating its own employees.

11 Without the police department's  
12 cooperation COPA couldn't even get any records.  
13 They don't have access to records on their own.

14 THE COURT: What I was focusing on is  
15 10 to 15 degrees off that point perhaps.

16 It is Mr. Topic's argument that  
17 for purposes of (7)(1)(d) of FOIA, COPA on the  
18 one hand, and the police department on the  
19 other hand, are just not the same entity.

20 How do you respond to that?

21 MS. RITTER: Its true. I agree with  
22 that. They are not the same entity. There is

1 no getting around that.

2 COPA and the police department  
3 are two separate public bodies under the terms  
4 of the FOIA statute. We agree with that.

5 THE COURT: In that case, (7)(1)(d)(2)  
6 which says interfere with active administrative  
7 enforcement proceedings conducted by the public  
8 body that is the recipient of the request would  
9 not seem to fit here?

10 MS. RITTER: On it's face, that's true.  
11 I agree with that. And that's the sort of  
12 conundrum we are in here.

13 THE COURT: I'm not sure it makes  
14 practical sense, but the statute says what it  
15 says.

16 MS. RITTER: It doesn't make practical  
17 sense, and I agree the statute says what it  
18 says. And I understand that argument and  
19 that's why we are here.

20 I just have a few points to, sort  
21 of nuance points that I think are important to  
22 consider when we are talking about this.

1           The first is what I just  
2 mentioned that the COPA enabling statute -- or  
3 ordinance, which is codified at the Chicago  
4 Municipal Code 278140 says:

5           It shall be the duty of every  
6 officer, employee, department and agency of the  
7 City to cooperate with the office, the office  
8 here being COPA, and any investigation  
9 undertaken pursuant to this chapter, any  
10 employee or appointed officer of the City who  
11 violates any provision of this chapter shall be  
12 subject to discipline including but not limited  
13 to discharge in addition to any other penalty  
14 provided in this chapter.

15           So COPA contemplates, COPA  
16 investigations contemplates that they  
17 necessarily rely on other City departments to  
18 get the records, for their assistance, et  
19 cetera.

20           In this case, COPA's Chief  
21 Administrator Sidney Roberts has made it very  
22 clear through her letters and her testimony --

1 letters to Superintendent Johnson, which was  
2 attached to the CPD's motion, and also her  
3 testimony at the police board, that in fact  
4 COPA's investigation, which is obviously a very  
5 important issue, very important public policy  
6 matter to allow their investigation to continue  
7 unhindered, would in fact be hindered by the  
8 release of further records in this case,  
9 specifically video.

10 THE COURT: I have to argue with your  
11 tense, as Mr. Topic would.

12 The problem is not that the  
13 investigation would in fact be hindered, but if  
14 we were to take Ms. Roberts literally, that the  
15 investigation already has been hindered, right?

16 MS. RITTER: She does make -- I do  
17 take issue with that, her statement I will read  
18 from it. Give me a moment to find the right  
19 section.

20 She says, and this is quoting  
21 from the letter that she wrote dated July 19,  
22 2018 to Police Department Superintendent Eddy

1 Johnson, she said:

2 Publically releasing video -- and  
3 I understand this is the tense issue that you  
4 are talking about, there is a follow-up later  
5 in the letter that I think ties it into her  
6 request to not release further materials.

7 She says: Publicly releasing  
8 video prior to COPA conducting key interviews  
9 creates a substantial risk that witnesses to an  
10 incident, civilian or sworn, may intentionally  
11 or unintentionally comport the recollections of  
12 the events with what they have seen in the  
13 video.

14 Additionally, such unilateral  
15 public release does not allow COPA, as it is  
16 required to do under the City's video release  
17 policy, the opportunity to afford the deceased  
18 next of kin review of the video prior to the  
19 release.

20 And then she says, further down  
21 in the letter, COPA therefore requests that the  
22 department cease any further release of

1 information in this case or other COPA  
2 investigations without the express concurrence  
3 of COPA.

4 So she is -- I agree with you  
5 that a lot of her focus is sort of taking issue  
6 with CPD's decision to release the initial  
7 segment, small segment of the larger portion of  
8 video that exists, but she does tie it into,  
9 please stop, please don't release anything  
10 further.

11 THE COURT: Okay. I understand that.  
12 I think the difficulty that I have with the way  
13 events in this case have unfolded, is that if  
14 we look at the precise situation that we are  
15 looking at here, and then we try to generalize  
16 from that a rule the effect of which is to say  
17 that the police department should stop when  
18 Ms. Roberts says they should stop.

19 This allows spin of an extreme  
20 nature in a way that it is a little difficult  
21 to square with purposes of FOIA.

22 If the police superintendent

1 releases, say you have a 10-minute video, the  
2 police superintendent releases 3 minutes of it,  
3 and then the other 7 are suppressed because  
4 COPA says, well, you shouldn't be interfering  
5 with our investigation, that's a little hard to  
6 justify, isn't it?

7 MS. RITTER: Only -- it is only hard to  
8 justify if there is additional information on  
9 that additional 7 minutes of video in your  
10 hypothetical that show for example other  
11 events, other witnesses that need, you know, to  
12 be interviewed, other things that they wish  
13 to --

14 THE COURT: I don't know that as I sit  
15 here. And the last thing in the world that  
16 would make any sense, would be for some Judge  
17 presiding over a FOIA case to be trying to make  
18 decisions of that sort about parts of a video.

19 MS. RITTER: Agreed. That's why the  
20 statements of Chief Administrator Roberts as  
21 verified by the affidavit of general -- acting  
22 General Counsel Brandon Crase of COPA, submit



1 that in fact, she is saying the release of the  
2 further stuff would in fact impede our  
3 investigation.

4 That is what she -- I agree with  
5 your Honor that you can't possibly make that  
6 decision, having not seen the video, but she  
7 has.

8 And she is saying, I need you to  
9 not release that because I'm saying that it  
10 would intentionally or unintentionally comport  
11 witnesses recollection of the events with what  
12 they have seen in the video.

13 She is saying that publically and  
14 also to Superintendent Johnson, and we have  
15 that submitted as an affidavit.

16 THE COURT: Is it not true though her  
17 July 19th letter comes -- although its really  
18 nicely written, if you are going to write a  
19 very difficult letter in a short period of time  
20 she does a good job of it, but the conclusion  
21 she comes to is a possibility not a fact.

22 She says in short:

1 Any narrative driven decision  
2 relating to release of information, may  
3 undercut, may undercut COPA's ability to  
4 balance transparency with investigative needs  
5 and may also undercut the long-term goal of  
6 public trust. It doesn't say it will. It says  
7 it might.

8 And in the abstract, it is hard  
9 to quarrel with the use of may, you need to  
10 know in a particular situation what was what.

11 MS. RITTER: I would submit it is  
12 impossible honestly for anybody to say  
13 something that will happen, a certainty of  
14 something that will happen in the future.

15 In other words, releasing this  
16 video will cause a witness to change his  
17 testimony once he sees the video.

18 I mean no one can predict the  
19 future, but I think in this case the word "may"  
20 is used in a fashion, especially as through the  
21 affidavit that we submitted, to say this is a  
22 serious danger that's based on her experience

1 as administrator and based on fact and --

2 THE COURT: She just assume not have  
3 somebody else managing the narrative anyway.  
4 Narrative driven as she is using it is not a  
5 complimentary term.

6 MS. RITTER: Correct.

7 THE COURT: But whenever we treat her  
8 as operating in an atmosphere of may or might,  
9 we have a problem with the language of the FOIA  
10 exemption which doesn't say may or might, it  
11 says would.

12 MS. RITTER: I agree that it says  
13 would. I just don't know, from a practical  
14 perspective, when you are talking about, you  
15 know, if I were the administrator or someone  
16 with an investigatory background, in my  
17 professional opinion this is the sort of thing  
18 that might cause a witness -- I mean no one can  
19 predict whether a witness, even if he sees the  
20 video, might chose to comport his testimony to  
21 the video, or might chose to not do so or might  
22 inadvertently chose, you know, may absolutely

1 intend not to, but inadvertently do so, because  
2 of the failing of human memory.

3 I don't know that there is ever a  
4 situation someone can say it would do that, you  
5 can't get in the mind of a witness about  
6 something that hasn't occurred yet.

7 THE COURT: Well, that's a peculiarly  
8 legal analysis and it is a familiar one.

9 That's why we exclude witnesses  
10 in trial. It is not we are sure they are going  
11 to try to lie, it is we don't want to spend the  
12 time figuring out that they didn't.

13 The general assembly is mostly  
14 lawyers, it has got to be at least half  
15 lawyers, and they know the difference between  
16 would and might or should and might.

17 So I can't conclude that I should  
18 read to the extent that disclosure would  
19 interfere as meaning to the extent that  
20 disclosure might interfere.

21 That's -- I grant you the  
22 treatises on statutory construction. So you

1 can prove anything from the treatises on the  
2 statutes of statutory construction.

3 That does seem to be a bit of a  
4 stretch, doesn't it?

5 MS. RITTER: I understand your  
6 position. I just wonder, you know, in general  
7 as to how to interpret the statute, in any way  
8 that makes sense, because there is never a time  
9 that somebody can predict what will cause a  
10 witness to comport his testimony.

11 THE COURT: But that's a larger  
12 problem, to some extent it is the elephant in  
13 the room. And I may as well point out there is  
14 an elephant in the room.

15 There is nothing more interesting  
16 to the news media than a huge loud problem.

17 MS. RITTER: I'm sorry.

18 THE COURT: Than a huge loud problem.  
19 There is also nothing that is likely to make a  
20 huge loud problem worse than disclosing it in  
21 big head lines before anybody has an  
22 opportunity to come to grips with it.

1           So if we were going to write a  
2     statute that was intended to maximize the  
3     ability of authorities to deal with difficult  
4     and really potentially problem causing  
5     problems, we probably wouldn't do it the way  
6     FOIA is written.

7           The thing is FOIA by its nature  
8     appears to have almost taken that whole  
9     dialogue off the table. That's what the general  
10    assembly chose to do.

11          And although it might make sense  
12    to go to Springfield and say: Look, people you  
13    might want to rethink this a bit. The way they  
14    wrote it is the way they wrote it, and we are  
15    stuck with it.

16          And the argument that Mr. Topic  
17    has, namely Superintendent Johnson chose to  
18    release part of this video, unless we assume  
19    that he doesn't know his job, which is not an  
20    assumption I'm willing to make, he came to the  
21    conclusion that that was okay.

22          All we want now is the rest of

1 it.

2 MS. RITTER: To be clear the rest of  
3 that video and additional other videos.

4 THE COURT: The rest of the  
5 videographic record leads to the facts.

6 MS. RITTER: Agreed.

7 THE COURT: But that doesn't change  
8 the point that I am making.

9 MS. RITTER: I understand.

10 THE COURT: Once you open the door and  
11 the horse has run out, it doesn't matter how  
12 good the lock on the door is, they are gone.

13 Is there -- within the confines  
14 of FOIA's language is there a response to that,  
15 do you think in this instance?

16 MS. RITTER: Only what I believe I've  
17 already made clear, I don't want to belabor it,  
18 that the administrator of COPA or any other,  
19 you know, sort of person who has seen the video  
20 is in the position to say look, while a certain  
21 segment of the video -- of the existing videos,  
22 plural, has been released, there are other

1 parts that we still have concerns.

2 The fact that one portion was  
3 released doesn't obviate the risk that there is  
4 other portions that if a witness saw could  
5 comport or would comport their testimony to it.

6 So I don't know that -- I think  
7 it is fair to say here that Chief Administrator  
8 Roberts, rather than just rolling over on it  
9 and saying I disagree with your decision to  
10 release that portion of the video, and  
11 shouldn't do it in the future, she made it very  
12 clear, both at the police board and in the  
13 letter to Superintendent Johnson.

14 And again in the affidavit, I'm  
15 talking about this case, you release that small  
16 portion of the video, there is other stuff in  
17 the rest of the video that is going -- that  
18 again, the word is may, may, you know, infuse  
19 the investigation that COPA is participating  
20 in.

21 She chose to take a stand on that  
22 issue, as opposed to just saying, don't do that



1 in the future.

2 THE COURT: I understand what you are  
3 saying, but I think you would have to focus  
4 more on her letter, which is a much more  
5 general policy pronouncement.

6 But on your transcription at  
7 pages 7 and 8 of your summary judgment motion  
8 of what Administrator Roberts said to the  
9 police board in the July 19th meeting, which  
10 has more to do with the particular situation.

11 MS. RITTER: Correct. And she says in  
12 that transcript, you know, for example, further  
13 audio and video release prior to the interview  
14 of key witnesses creates substantial risk to  
15 the entirety of this investigation.

16 THE COURT: Okay. I -- that's what I  
17 was looking at, that's a conclusory statement,  
18 you know that.

19 MS. RITTER: It is, but she -- I  
20 believe that she flushes it out with her  
21 example just above that that COPA must insure  
22 that witnesses, civilian or sworn, do not

1 intentionally or otherwise comport their  
2 interview statement to what they observed on  
3 video rather than their independent  
4 recollection. So she is flushing out that  
5 conclusion statement.

6 THE COURT: Couldn't you argue that  
7 the remedy for that, given the FOIA framework  
8 and given the circumstances that exist in this  
9 particular instance, is for COPA to get the  
10 heck on the job as fast as possible and get the  
11 interviews done.

12 MS. RITTER: In this case, the  
13 complaint was filed only 2 business days after  
14 the shooting at 11 in the morning, so really  
15 only --

16 THE COURT: Okay. But I'm not talking  
17 now about the filing of the complaint, I'm  
18 talking about where we are, we are now what a  
19 month after the police board's meeting of  
20 July 19th.

21 MS. RITTER: As I mentioned at the  
22 beginning of my argument, here they are

1 planning to release the materials today and  
2 they hustled as much as they can.

3 I can tell you from my personal  
4 experience being involved in this, and their  
5 process of releasing videos, in fact, you know,  
6 that's part of my duties, it does take time to  
7 gather the records.

8 For example, your Honor, in this  
9 case there is not only body work camera  
10 footage, in fact I've seen a lot of it, there  
11 are 80 separate body warrant camera videos,  
12 each of which are, you know, random in time  
13 from about 20 minutes to an hour.

14 Because after the shooting there  
15 was a lot of crowd reaction and a number of  
16 officers, you know, responding to that event.  
17 And so we have a ton of body video.

18 On top of that, and so COPA has  
19 to watch all of that. On top of that there are  
20 third-party videos that were gathered from the  
21 stores that were on the street that the  
22 incident occurred on. So it does take --

1 THE COURT: You mean security cameras?

2 MS. RITTER: Security cameras,  
3 correct.

4 THE COURT: Not some guy with an  
5 iPhone?

6 MS. RITTER: Correct. In this case,  
7 we don't have any, you know, guy with an iPhone  
8 video. In this case we have surveillance  
9 video.

10 You know, there are -- they have  
11 to talk to the witnesses and find out, is there  
12 a guy with an iPhone who has this? I mean  
13 that's part of their investigation.

14 So it does take time to gather  
15 the records together in order for them to find  
16 out who the witnesses are to be interviewed.  
17 That can happen, you know, it certainly can't  
18 happen in two business days.

19 And arguably it is a very very  
20 onerous process for it to happen in 30 days,  
21 which luckily it has happened here.

22 I suppose a little more than

1 30 days, 6 weeks or so.

2 THE COURT: It seems safe to say  
3 though, accepting the practical truth of  
4 everything you are saying, that it is  
5 improbable that this will be the last time when  
6 COPA or the department gets caught flat footed  
7 by an early release of something, and it would  
8 probably be a good idea to have in place, ahead  
9 of time, some protocols for how to deal with  
10 that.

11 So that not only do you prevent  
12 the barn door from being inappropriately  
13 opened, but also if it is opened, you have a  
14 procedure in place whereby you can stop even  
15 more horses from getting out.

16 MS. RITTER: Understood.

17 THE COURT: Rather than simply making  
18 conclusory statements about it, which doesn't  
19 help much of anybody, so but I understand that  
20 your situation in this is not terribly easy.

21 THE COURT: Go ahead.

22 MS. RITTER: Your Honor, I think I

1     stated everything I need to say in this, I  
2     don't think I have a further argument other  
3     than, you know, just again to reiterate, I  
4     don't think it was a conclusory statement that  
5     superintendent -- Chief Administrator Roberts  
6     made about how the release of further video  
7     would impede the ongoing administrative  
8     proceeding.

9                 She does make statements about,  
10    you know, based on her experience as a law  
11    enforcement officer, you know, that releasing  
12    the further parts of the video, the entire  
13    horse wasn't out of the barn by releasing the  
14    small portion or more horses.

15                And that those horses need to be  
16    kept in check until such time as it makes  
17    sense, you know, from a practical purpose,  
18    police and stuff, COPA exists.

19                There is obviously a strong  
20    public interest in the existence of COPA to do  
21    investigations and have integrity of their  
22    investigations of potential police misconduct.

1 Any time an officer fires a  
2 weapon COPA automatically investigates. What  
3 they have done here, particularly as someone,  
4 you know, unfortunately passed away in this  
5 incident, to inspect the other entities of the  
6 City, the police department to release  
7 everything within two days business days after  
8 the shooting or we are going to get sued the  
9 next day is absolutely not -- it doesn't  
10 follow -- I mean, first of all, it doesn't  
11 follow the written terms of FOIA as far as the  
12 time limit.

13 But even if it did, it doesn't  
14 serve the public interest in allowing COPA to  
15 do its independent investigation of the police  
16 department.

17 THE COURT: Although, this would not  
18 be the first occasion on which two equally  
19 valid public interests happened to have  
20 collided head on in a particular situation, it  
21 is going to happen.

22 MS. RITTER: Sure.

1 THE COURT: Mr. Topic.

2 MR. TOPIC: You know, I don't really  
3 have anything to say that you didn't address  
4 already.

5 I guess just briefly to the time  
6 and point, I do want to point out the suit was  
7 filed because the City, the police department  
8 publically stated it was not going to release  
9 anything further.

10 So it is not a situation in which  
11 every time there has been a shooting and two  
12 days later there necessarily will be a lawsuit,  
13 the City and the police department made that  
14 announcement in unequivocal terms.

15 And I would note here, then they  
16 even took an extension of five more business  
17 days. They had already made a decision --

18 THE COURT: If you were them would you  
19 have?

20 MR. TOPIC: If I was them, I would  
21 have released this video within 24 hours or 48  
22 hours at least like other City's do, that's



1 what I would do.

2 If I had their goals and their  
3 motivations, then yes, I would make this take  
4 as long as possible.

5 You know, procedurally, I think,  
6 I don't even know that we need to get into  
7 this, I think we can leave today with an agreed  
8 order that COPA is going to produce it today  
9 and CPD will refer our client to the place  
10 online where he can download those videos.

11 So I don't necessarily know we  
12 need to get into that, it certainly should not  
13 be a problem for us to amend the complaint to  
14 add in what is already flushed out in the  
15 pleadings, because there is nothing in the  
16 additional events that occurred after we filed  
17 suit that anyway has changed the analysis here.  
18 They did exactly what they said they were going  
19 to do.

20 THE COURT: Well, you have tendered  
21 the possibility of resolving today's proceeding  
22 by way of an agreed order.

1 I can't agree for anybody, but it  
2 certainly makes sense to me.

3 And the Court would have a --  
4 would suggest a push in that direction in the  
5 sense that one of the worst things that a Court  
6 can do is to unnecessarily decide an issue the  
7 Court doesn't actually have to decide,  
8 especially where the issue is a difficult  
9 issue.

10 So if the two of you want to get  
11 the Court off that hook, the Court is not going  
12 to object to your efforts.

13 MS. RITTER: I didn't want to  
14 interrupt you, your Honor, but yes, the City  
15 would agree to that agreed order.

16 THE COURT: Okay. Why don't we recess  
17 briefly then and see if the two of you can come  
18 up with the text of an order that makes you  
19 comfortable, that won't necessarily end this  
20 case, but it will certainly end the proceeding  
21 that we are involved in today and it gets me  
22 off the cafe hook.

1 MR. TOPIC: Great. Thank you, your  
2 Honor.

3 THE COURT: Briefly in recess.

4 (Recess.)

5 THE COURT: Do we have an order?

6 MS. RITTER: We do.

7 MR. TOPIC: We do. Could we have a  
8 date for further status?

9 THE COURT: What makes sense?

10 MR. TOPIC: Around a week.

11 THE COURT: Okay.

12 MR. TOPIC: Longer is not a problem.

13 THE COURT: The keeper of the book is  
14 looking skeptical.

15 THE CLERK: Next Thursday at 2:00.

16 MR. TOPIC: I have a doctor's  
17 appointment, if we need to go to the week  
18 after, that wouldn't be a problem.

19 THE CLERK: Tuesday the 4th.  
20 Otherwise we could do Friday, Friday the 7th.

21 MS. RITTER: I'm fine with the 4th. If  
22 counsel --

1 MR. TOPIC: What time?

2 THE CLERK: 10:00.

3 MR. TOPIC: That would be fine, the  
4 4th at 10:00.

5 THE COURT: Put that in the order and  
6 sign the order. Thank you both.

7 MR. TOPIC: And, your Honor, we just  
8 wanted to thank you again, I know we expedited  
9 this and I know that --

10 THE COURT: There is that thing in the  
11 statute.

12 MR. TOPIC: We try to use that  
13 sparingly, but we do appreciate you getting it  
14 done.

15 (WHICH were all of the  
16 proceedings had in the above  
17 entitled cause.)  
18  
19  
20  
21  
22

1 STATE OF ILLINOIS )

2 )

3 COUNTY OF COOK ) SS:

4 Re: WILLIAM CALLOWAY V. CPD

5 No. 18 CH 8965

6 I, Carol M. Siebert-LaMonica, C.S.R. in  
7 for the County of Cook, State of Illinois, do  
8 hereby certify that the foregoing Report of  
9 Proceedings was recorded stenographically by me  
10 and was reduced to computerized transcript  
11 under my direction, and that the said  
12 transcript constitutes a true record of the  
13 proceedings.

14 I further certify that I am not a relative  
15 or employee or attorney or counsel of any of  
16 the parties, or relative or employee of such  
17 attorney or counsel, or financially interested  
18 directly or indirectly in this action.

19 I affixed my signature this 20th day of  
20 August, A.D. 2018.

21 CAROL M. SIEBERT-LAMONICA, C.S.R.

22 Illinois CSR License 084.0001355



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## IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

CALLAWAY

v.

No. 18 CH 8965CHICAGO POLICE DEPTAGREED ORDER

The Civilian Office of Police Accountability shall produce all of the requested records at issue in this case by 5 pm on August 16, 2018. Case is set for further status on Sept. 4, 2018 at 10<sup>00</sup> am.

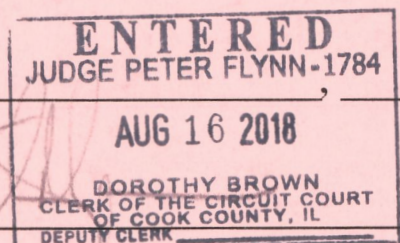
Atty. No.: 41295Name: Matt TapiAtty. for: PlaintiffAddress: 311 N AberdeenCity/State/Zip: 60657Telephone: 312-243-542

ENTERED:

Dated: \_\_\_\_\_

Judge \_\_\_\_\_

Judge's No. \_\_\_\_\_



DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

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Exhibit C



IN THE CIRCUIT COURT, COOK COUNTY ILLINOIS

CHANCERY DIVISION

|                            |   |                 |
|----------------------------|---|-----------------|
| WILLIAM CALLOWAY,          | ) |                 |
|                            | ) |                 |
| Plaintiff,                 | ) |                 |
|                            | ) |                 |
| vs.                        | ) | No. 18 CH 08965 |
|                            | ) |                 |
| CHICAGO POLICE DEPARTMENT, | ) |                 |
|                            | ) |                 |
| Defendant.                 | ) |                 |

REPORT OF PROCEEDINGS at the hearing of

the above-entitled cause before the Honorable

JUDGE PETER FLYNN, Judge of said Court, in

Courtroom 2408, Daley Center, Chicago, Illinois

on Friday, September 7, 2018 commencing at

10:15 A.M.

## 1 APPEARANCES:

2 LOEVY &amp; LOEVY, by

3 MR. JOSH BURDAY

4 (311 North Aderdeen, 3rd Floor

5 Chicago, Illinois 60607)

6 appeared on behalf of the plaintiff;

7  
8 CITY OF CHICAGO, by

9 MS. AMBER RITTER

10 MS. MARTHA VICTORIA DIAZ

11 (30 North LaSalle Street, Suite 1720

12 Chicago, Illinois 60602)

13 appeared on behalf of the defendant.

14  
15  
16  
17  
18 - - - -  
19  
20  
21  
22



1 MS. RITTER: Amber Ritter and Martha  
2 Diaz for the City Police Department.

3 MR. BURDAY: Good morning, your Honor.  
4 Josh Burday on behalf of plaintiff.

5 So the issues of penalties and  
6 attorneys fees remain.

7 We also need something in writing  
8 demonstrating that all of the records have been  
9 produced.

10 We fully expect that all of the  
11 records have been produced, we just need  
12 something in writing confirming that and we  
13 just --

14 THE COURT: Pursuant to what?

15 MR. BURDAY: Well, I mean we could,  
16 you know, come in on motion practice, you know.

17 THE COURT: Pursuant to what?

18 If we were talking a Rule 214  
19 document production request, you would be  
20 entitled to something in writing that says the  
21 records have been produced.

22 I don't know of a section of the

1 Freedom of Information Act that calls for the  
2 same procedure as it applies under Rule 214.

3 And I'm reluctant to invent yet  
4 another requirement to FOIA, which already has  
5 plenty.

6 So I see why you would like to  
7 have some kind of certification of  
8 completeness.

9 But the first question is what  
10 exactly does it say.

11 And the second question is, what  
12 is the authority for my requiring it as opposed  
13 to the three of you agreeing on some language?

14 MR. BURDAY: So as a practical matter,  
15 it wouldn't need to be an affidavit from our  
16 prospective, anything in writing would be fine.

17 The authority for it would be the  
18 requirement to prove that you performed an  
19 adequate search, and that is a requirement  
20 under FOIA.

21 THE COURT: So every response to a  
22 FOIA request has to include detailed analysis

1 of what search was done?

2 MR. BURDAY: It could potentially,  
3 yes.

4 THE COURT: But could potentially and  
5 required in every case aren't the same things.

6 MR. BURDAY: Right. Well, a lot of  
7 times, you know, a requestor requests a record  
8 and the record is turned over.

9 THE COURT: That's kind of what I  
10 thought you had here.

11 MR. BURDAY: And we expect that we do  
12 have everything here. We are not expecting,  
13 you know, we weren't anticipating any motion  
14 practice on the issue, we just wanted  
15 confirmation.

16 THE COURT: I entered an order on  
17 August 16th, which was an agreed order.

18 On -- the language of the order  
19 came from Mr. Topic himself.

20 MR. BURDAY: Yes, your Honor.

21 THE COURT: And it said:

22 "The Civilian Office of Police

1 Accountability produce all of the requested  
2 records at issue in this case by 5:00 P.M. on  
3 August 16th."

4 There does not presently appear  
5 to be a dispute about whether that was done.

6 Why isn't the order and the fact  
7 that it was entered by agreement, an adequate  
8 demonstration that the records that were  
9 produced were the records that you were looking  
10 for?

11 If there is something specific  
12 that you think you should have, but you don't  
13 have, that's a whole other thing, and we can  
14 talk about that.

15 If all you want is general  
16 satisfaction, you have got that in the language  
17 of the order itself I would think.

18 MR. BURDAY: So what we were looking  
19 for is something from CPD saying that what COPA  
20 produced was everything that CPD had. And CPD  
21 didn't have something more that wasn't produced  
22 by COPA.

1 MS. RITTER: Again, your Honor's  
2 order, which was an agreed order, orders that  
3 very thing. And we are, you know, here to say  
4 that we complied with the order.

5 I agree with your Honor's point  
6 that to have an affidavit in every FOIA request  
7 or every case that's complete is beyond the  
8 scope of what FOIA requires.

9 As your Honor noted, there is an  
10 order saying you must produce everything that's  
11 requested by 5:00 P.M., which we have done.

12 THE COURT: It may well be,  
13 Mr. Burday, that literally speaking the police  
14 department has some piece of paper that wasn't  
15 requested.

16 Since the agreement was to  
17 produce all of the records that were requested,  
18 the existence of some other piece paper would  
19 seem to me to be beside the point, particularly  
20 when I'm looking at an agreed order, and no  
21 apparent dispute about whether the order was  
22 complied with.

1           Before I require some kind of  
2       sweeping certification, I want to know why.  
3       And a reason doesn't hit me at the moment.

4           Again, this is different from a  
5       situation where you look at a bunch of  
6       documents and you say, these documents ought to  
7       include X Y and Z. But that's not the issue  
8       here. As far as we know, X Y and Z were  
9       included. So I would think we are done in  
10      terms of production.

11           MR. BURDAY: Well, certainly if  
12      counsel is willing to represent that, and I  
13      would just say that anything outside of the  
14      scope of the request, we had just been treating  
15      as though, you know, we didn't expect anything  
16      outside of the scope of the request.

17           THE COURT: That's what the order  
18      said.

19           MR. BURDAY: Right. Certainly if  
20      there was other records outside of the scope of  
21      the request, that would not -- we would not  
22      expect that to be produced. We would not

1 expect that to be anything in writing saying it  
2 had been produced.

3 It was just the records that --  
4 within the scope of the request CPD had, if  
5 they had not been produced by COPA.

6 And if counsel is willing, you  
7 know, to say on the record that everything that  
8 CPD had was produced by COPA then that would  
9 be --

10 THE COURT: I would not ask counsel to  
11 say that on the record, because that would go  
12 beyond the scope of the August 14th order  
13 anyway.

14 What I would expect counsel to  
15 say on the record as officers of the Court, is  
16 that the agreed order has been complied with.  
17 And I think they did say that.

18 So I think you got what you came  
19 for in that sense.

20 MR. BURDAY: Okay.

21 THE COURT: Now, your position is that  
22 there are issues of further relief.

1 MR. BURDAY: Yes, the issues of  
2 penalties and fees.

3 THE COURT: Okay. Have you discussed  
4 that at all?

5 MS. RITTER: We haven't.

6 Your Honor, I want to remind the  
7 Court that we actually don't have any kind of  
8 finding against us. We had an agreed order to  
9 produce the records that day, which was  
10 complied with.

11 THE COURT: Ms. Ritter, the difficulty  
12 here is that as you know, FOIA plaintiffs as a  
13 group take the position that there is always a  
14 fee no matter what.

15 The language of FOIA is not  
16 exactly crystal clear.

17 MS. RITTER: But I would submit  
18 that -- I'm sorry.

19 THE COURT: I think we are going to  
20 have to litigate this out to the extent that  
21 the parties can't agree on it, because there is  
22 no instantly self-evident solution to that



1 problem.

2 And one can read FOIA as saying  
3 that -- I'm not saying that I think one ought  
4 to, but one can read FOIA as saying that any  
5 time there is a FOIA request and there is  
6 anything more than instant full compliance,  
7 fees are proved.

8 The body of case law on this is  
9 sparse and really not helpful.

10 If we have to develop the case  
11 law, we may be doing future generations a  
12 favor, painful as to all of us at the present  
13 time.

14 So I can't just sort of wave a  
15 magic wand that way and suddenly make it clear.

16 MS. RITTER: We are happy to brief the  
17 issue should plaintiff here file a fee  
18 petition, which he hasn't done.

19 We do think that the case law,  
20 while I agree its sparse and not necessarily  
21 always illustrative, it does say -- the  
22 prevailing case law does say that a plaintiff

1 prevails and is entitled to receive -- when he  
2 received records as a result of the lawsuit.

3 Our position would be that we  
4 made it clear at the beginning of the hearing  
5 when we were back here on the 16th, that we  
6 were prepared to produce those records that day  
7 anyway, and they would be produced anyway  
8 pursuant to the COPA video release policy.

9 So our position is that they did  
10 not get these records as a result of this  
11 lawsuit. Again that's something we are happy  
12 to brief.

13 THE COURT: There is room for them to  
14 argue that they did get the records as a result  
15 of the lawsuit.

16 While the argument much of the  
17 time is from my prospective profitless because  
18 the cost of answering the question dwarfs the  
19 amount in dispute anyway.

20 The same problem exists there as  
21 exists in the 1983 -- or 1988 situation where a  
22 Court has to decide whether a governmental body

1 changed its policy as a result of the lawsuit  
2 or just because it was going to anyhow.

3 The problem is I believe more  
4 acute in the FOIA situation, because the FOIA  
5 version of that problem will occur and be  
6 replicated time after time after time.

7 And we really ought to have some  
8 fairly clear guidelines as to how to proceed.

9 Somebody has to set the  
10 guidelines. I would rather it wasn't me, but  
11 if we have to start somewhere then we have to  
12 start somewhere.

13 I think you are quite right  
14 though, that from the standpoint of resolving  
15 the issue here it is going to have to start  
16 with a fee petition.

17 And you are going to have to  
18 articulate in connection with your fee petition  
19 why you consider yourselves to be the  
20 prevailing parties.

21 Then the City can take issue with  
22 that, and we will try to sort it out.

1 MR. BURDAY: Yes, your Honor. Taking  
2 a step back, I can tell you our client's  
3 concern here is that this is something we are  
4 going to see to continue to replicate in the  
5 future.

6 We are very happy that the video  
7 was released in a much more timely manner this  
8 time, but it is a recurring theme, that CPD  
9 continues to rely on COPA, COPA's  
10 investigation, to deny the records, but that's  
11 not what the law says.

12 They make claims about release  
13 interfering with the investigations that they  
14 don't prove out.

15 And there is a concern that this  
16 is going to keep happening moving forward.

17 I mean we would be happy to sit  
18 down with your Honor and have a settlement  
19 conference and just talk about trying to work  
20 something out.

21 THE COURT: The only form of working  
22 something out that would be worth having a

1 settlement conference about that involves the  
2 Court is trying to come up with a set of  
3 guidelines that could be applied to each case  
4 anybody can envision and would yield an answer  
5 straightaway. That is worth trying to work  
6 out.

7 I don't know that this is the  
8 precise case in which to try to do that, but  
9 that is certainly something that would be  
10 helpful to work out.

11 The difficulty that you have  
12 structurally here, in my view, is that you  
13 don't have to be particularly devious to  
14 envisage a use of FOIA which is intended to  
15 impair an ongoing investigation. We don't want  
16 that to happen.

17 If it is possible to come up with  
18 a bright-line rule, and you want it to be  
19 bright line so that we don't have to replicate  
20 it every time.

21 MR. BURDAY: Right.

22 THE COURT: That serves your purpose

1 of encouraging prompt release at the same time  
2 as it prevents misuse of FOIA to derail an  
3 ongoing investigation then yeah, that is well  
4 worth talking about.

5 At the moment though I don't have  
6 any sort of a record on which to address that  
7 question.

8 And as I said I think it is going  
9 to have to begin with a fee petition from your  
10 side.

11 MR. BURDAY: Yes, your Honor.

12 THE COURT: If the three of you can  
13 work out, I can't believe I'm doing this to  
14 myself, if the three of you can work out a  
15 formula for a test case that actually works,  
16 okay, let's do it, and we will see what  
17 happens.

18 MS. RITTER: That is something to  
19 consider. I appreciate the Court's guidance on  
20 that. We will talk to our client and see if  
21 that's something that what we can do.

22 I think that would not be a bad

1 idea at all, if that's possible.

2 THE COURT: Okay. I just want to flag  
3 the Court also that we just last night received  
4 a discovery request from plaintiff.

5 I believe what he is saying goes  
6 to whether there should be a penalty for  
7 willful violation of FOIA in this case, they  
8 include subpoenas to COPA and to, I guess, the  
9 mayor's office, subpoena for depositions,  
10 requests for production that includes -- or  
11 request for all documents discussing the  
12 decision in the Laquan McDonald shooting case.  
13 I mean they are quite broad.

14 As I mentioned to the Court, we  
15 just got these last night. We will probably  
16 move to at least limit or strike some of them.

17 THE COURT: The first thing you are  
18 going go to need to do is go through a 201 (k)  
19 conference.

20 MS. RITTER: Correct.

21 THE COURT: Off of the top of my head,  
22 although the discovery requests would not be

1 particularly germane to the production of  
2 documents that have already been produced, they  
3 might have a bearing on the fee petition, which  
4 is going to come because they might address  
5 some of the issues we have just been talking  
6 about in that regard.

7           What I think you might want to do  
8 is first try to figure out what the parameters  
9 of that discussion are likely to be, and then  
10 look at these discovery requests in light of  
11 those parameters.

12           But that's in the first instance  
13 for the three of you to do, not for me to do.  
14 So --

15           MS. RITTER: I agree. I think to me  
16 it seems that the best first step would be that  
17 they file their fee petition. That we see what  
18 issues are at issue there. And then we discuss  
19 you know, the discovery, if necessary going  
20 forward.

21           THE COURT: Yes.

22           MS. RITTER: And then also respond to



1 the motion for fee petition.

2 MR. BURDAY: Well we need to go  
3 through the discovery before filing anything  
4 related to the discovery.

5 THE COURT: No. I am not going -- this  
6 is a variance on a proposition that there is  
7 more support in the case law for it than I  
8 would have thought.

9 According to the Appellate Court,  
10 and therefore according to me, a Court has no  
11 authority to issue discovery or to permit the  
12 issuance of discovery without a proper  
13 complaint on file.

14 Here if you were issuing  
15 discovery solely in aid of getting the  
16 documents that you've already got, I would  
17 strike it because it is redundant and  
18 pointless.

19 We all agree that to the extent  
20 that the discovery is significant, it has a  
21 bearing on a fee petition which doesn't yet  
22 exist.

1           And I just made the point that if  
2     you are going to have a meaningful 201 (k)  
3     conference, which you need to do before I start  
4     considering whether to compel discovery, you  
5     have to have it not in the abstract but in the  
6     context of particular issues. That's the fee  
7     petition that hasn't been filed yet.

8           In this instance the logic of  
9     saying that you can't have discovery if there  
10    is no valid complaint on file, translates  
11    perfectly into you can't have this kind of  
12    discovery if there is no fee petition on file.  
13    We've got to do things one step at a time.

14           MR. BURDAY: I understand exactly what  
15    your Honor is saying. We have spoken or  
16    corresponded with counsel and their position is  
17    that all of the City departments do their best  
18    to complete investigations and release the  
19    records as soon as possible. And that's the  
20    factual issue that we dispute or one of the  
21    factual issues.

22           THE COURT: I don't care what all City

1 departments do, the only thing I would care  
2 about in this case, is who had had the records  
3 that were produced to you and should they have  
4 been produced sooner.

5 And that's definitely not all  
6 City departments. I certainly hope it isn't all  
7 City departments about there are what, several  
8 hundred?

9 MS. RITTER: There is.

10 THE COURT: I will set this for status  
11 in say 30 days. Talk to each other in the  
12 meantime.

13 To the extent that you can come  
14 back with a roadmap for kind of a little  
15 mini-test case, great. If you can't, we will just see  
16 what hands everybody has and play them as they  
17 exist. What's the date?

18 THE CLERK: October 10th.

19 MS. RITTER: Yes.

20 THE COURT: October 10th at 9:30.

21 MS. RITTER: Thank you, your Honor.

22 MR. BURDAY: Thanks, your Honor.

1 STATE OF ILLINOIS )

2 )

3 COUNTY OF COOK ) SS:

4 Re: WILLIAM CALLOWAY V. CPD

5 No. 18 CH 8965

6 I, Carol M. Siebert-LaMonica, C.S.R. in  
7 for the County of Cook, State of Illinois, do  
8 hereby certify that the foregoing Report of  
9 Proceedings was recorded stenographically by me  
10 and was reduced to computerized transcript  
11 under my direction, and that the said  
12 transcript constitutes a true record of the  
13 proceedings.

14 I further certify that I am not a relative  
15 or employee or attorney or counsel of any of  
16 the parties, or relative or employee of such  
17 attorney or counsel, or financially interested  
18 directly or indirectly in this action.

19 I affixed my signature this 7th day of,  
20 September, A.D. 2018.

21 CAROL M. SIEBERT-LAMONICA, C.S.R.

22 Illinois CSR License 084.0001355



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|--|--|--|---|---|



# SUPPLEMENTARY REPORT

All descriptions and statements in this entire report are approximations or summarizations unless indicated otherwise.

4. DATE OF ORIG. OCCURRENCE - TIME

14 JUL 18, 1731

|  |  |  |  |   |  |  |  |
|--|--|--|--|---|--|--|--|
| 1. INCIDENT/OFFENSE CLASSIFICATION LAST PREVIOUS REPORT<br>AGG. ASSULT - P.O.        |  | 1-UCR OFF. CODE<br>0861  |  | 2. ADDRESS OF ORIG. INCIDENT/OFFENSE<br>2042 E 71ST   |  | 3. BEAT OF OCCUR.<br>331   |  |
| 5. VICTIM'S/SUBJECT'S NAME AS SHOWN ON LAST PREVIOUS REPORT<br>CITY OF CHICAGO       |  |  |  | 6. FIRE RELATED<br>1 YES 2 NO   |  | 7. BEAT ASSIGNED<br>9211   |  |
| 2. VICTIM'S/SUBJECT'S ADDRESS<br>3510 S MICHIGAN                                     |  |  |  | 9. TYPE OF LOCATION OR PREMISE WHERE INCIDENT/OFFENSE OCCURRED<br>STREET  |  |  |  |
| 10. DESCRIBE PROPERTY IN NARRATIVE<br>T = TAKEN; R = RECOVERED                       |  |  |  | FILL IN THE FULL AMOUNT OF ONLY THOSE VALUES WHICH EITHER DIFFER FROM OR WERE NOT REPORTED ON THE ORIGINAL CASE REPORT OR THE LAST PREVIOUS SUPPLEMENTARY REPORT. |  |  |  |
| 1 MONEY<br><input type="checkbox"/> T \$<br><input type="checkbox"/> R               |  | 2 JEWELRY<br><input type="checkbox"/> T \$<br><input type="checkbox"/> R           |  | 3 FURS<br><input type="checkbox"/> T \$<br><input type="checkbox"/> R   |  | 4 CLOTHING<br><input type="checkbox"/> T \$<br><input type="checkbox"/> R              |  |
| 9 HOUSEHOLD GOODS<br><input type="checkbox"/> T \$<br><input type="checkbox"/> R     |  | 0 CONSUM. GOODS<br><input type="checkbox"/> T \$<br><input type="checkbox"/> R     |  | 1 FIREARMS<br><input type="checkbox"/> T \$<br><input type="checkbox"/> R   |  | 2 NARC./DANGEROUS DRUGS<br><input type="checkbox"/> T \$<br><input type="checkbox"/> R |  |
| 7 OFFICE EQUIPMENT<br><input type="checkbox"/> T \$<br><input type="checkbox"/> R    |  | 8 TV, RADIO, STEREO<br><input type="checkbox"/> T \$<br><input type="checkbox"/> R |  | 6 OTHER<br><input type="checkbox"/> T \$<br><input type="checkbox"/> R  |  | PROPERTY INVENTORY NOIS.<br>REF  |  |
| 11. OFFENDER'S NAME (OR DESCRIBE CLOTHING, ETC.)                                     |  | 12. HOME ADDRESS   |  | 13. SEX-RACE-AGE CODE   |  | HEIGHT   |  |
| 1  |  |  |  |   |  |  |  |
| 2  |  |  |  |   |  |  |  |
| 14. C.B. NO.   |  | 15. NO. Y.D. NO. OR J.D.A. NO.   |  | OFFENDER REL. CODE  |  | 16. NO. Y.D. NO. OR J.D.A. NO.   |  |
| OFF. 1   |  | OFF. 2   |  |   |  |  |  |
| 16. OFF. S. VEHICLE<br><input type="checkbox"/> USED <input type="checkbox"/> STOLEN |  | YEAR   |  | MAKE  |  | BODY STYLE   |  |
|  |  |  |  |   |  |  |  |
| COLOR  |  | V.I.N.   |  | STATE LICENSE NO.   |  | STATE  |  |
|  |  |  |  |   |  |  |  |

80. NARRATIVE

EVENT #12988. IN SUMMARY, R/T WAS DISPATCHED TO THE LISTED ADD. OF OCC. UPON ARRIVAL R/T WAS MET BY DT. ALFINI #20547 WHO DIRECTED R/T TO CARS PD7124, 9408 & 9544 AND REQUESTED R/T RECOVER ALL IN CAR CAMERA VIDEOS RELATED TO THE LISTED EVENT. AT THAT POINT R/T PERFORMED AN ADMINISTRATIVE SEARCH ON THE HARD DRIVES OF ALL THREE VEHICLES. VEHICLE 7124 YIELDED NEGATIVE RESULTS DUE TO A BAD FRONT CAM (PQUIP 23129). VEHICLE 9408 ALSO YIELDED NEGATIVE RESULTS DUE TO A SOFTWARE ERROR (PQUIP 23171). VEHICLE 9544 YIELDED A POSITIVE RETRIEVAL, VIDEO FILE PCOBPO6@20180714161639 WAS PULLED FROM THE FAIL SAFE FOLDER AND UPLOADED TO CITY SERVERS AND EVIDENCE.COM. ADDITIONALLY, TECH MADE (OVER)

|   |  |   |  |                                       |  |                                 |  |
|---|--|---|--|---------------------------------------|--|---------------------------------|--|
| 90. EXTRA COPIES REQUIRED (NO. & RECIPIENT) |  | 91. DATE THIS REPORT SUBMITTED -<br>14 JUL 18 |  | 92. SUPERVISOR APPROVING (PRINT NAME) |  | STAR NO.                        |  |
| 93. REPORTING OFFICER (PRINT NAME)          |  | 94. REPORTING OFFICER (PRINT NAME)            |  | SIGNATURE                             |  | 95. DATE APPROVED (DAY-MO.-YR.) |  |
| N/A   |  | [REDACTED]                                    |  | [REDACTED]                            |  | TIME                            |  |
| SIGNATURE                                   |  | SIGNATURE                                     |  | SIGNATURE                             |  | SIGNATURE                       |  |
| N/A   |  | [REDACTED]                                    |  | [REDACTED]                            |  | [REDACTED]                      |  |

CPD-11.411-A (REV. 8/85)

\*MUS

17. RD NO.  
349797

Exhibit E 181